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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 202

FRANK DE SIMONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES REGARDING MOOTNESS

The issue in this proceeding is the power of the United States District Court for the Southern District of California to issue a writ of habeas corpus ad testificandum directed to the Warden of the Federal Detention Headquarters in New York to produce petitioner in California. Although the writ was sustained on appeal, the petitioner was thereafter returned to the custody of the warden in New York and for that reason we regarded and described the writ as discharged. In any event, since the petitioner has fully served the sentence which kept him in the custody of the warden, his release from imprisonment has rendered moot the particular issue involved in this case. It is well settled that when the detention is ended

the object of the writ is met and the right or wrong of its issuance is no longer at issue. See *Stallings* v. *Splain*, 253 U.S. 339, 343.

The petitioner points to the fact that, after his production in California pursuant to the writ, he was, on April 9, 1959, ordered by the court to appear before the grand jury; that he is still subject to that order; and could eventually be held in contempt if he failed to obey the order. He argues that, for that reason, the proceeding is not moot. Any issues with respect to the petitioner's appearance before the grand jury may, however, be raised in connection with that proceeding, when and if a final judgment against him is entered. So far as the writ of habeas corpus ad testificandum itself is concerned, there is no longer any subject matter on which the court can act since the petitioner is not in custody.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

SEPTEMBER 1959.

U.S. GOVERNMENT PRINTING OFFICE: 1959